

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 WESTERN WASHINGTON REGION
3 STATE OF WASHINGTON
4

5 DRAGONSLAYER, INC., MICHELS
6 DEVELOPMENT, LLC, GREG AND SUSAN
7 GILBERT, AND CLARK COUNTY,

8 Petitioners,

9 v.

10 CITY OF LA CENTER,
11

12 Respondent,
13

14 and

15 SALISHAN-MOHEGAN, LLC AND THE
16 COWLITZ INDIAN TRIBE,
17

18 Intervenors.
19

Case No. 14-2-0003c

**CORRECTED
FINAL DECISION AND ORDER***

**This corrected FDO makes corrections to
pages 3, 19-22, 23-24 and 29-33 indicated
in the Order on Motions for Reconsideration
issued by the Board on
October 24, 2014.*

20 **SYNOPSIS**

21 The City of La Center (City) amended its comprehensive plan, capital facilities plan
22 and development regulations to allow, under certain circumstances, a sewer line extension
23 to property outside the City's Urban Growth Area (UGA) near Interstate 5. Petitioners
24 challenge the City's action arguing it is premature, does not address all environmental
25 impacts and is not in compliance with the Growth Management Act (GMA) and the State
26 Environmental Policy Act (SEPA). Specifically, Petitioners challenge extending the City's
27 sewer service beyond the UGA to a 152-acre parcel that will not be subject to GMA
28 jurisdiction if the Bureau of Indian Affairs (BIA) and the U.S. Department of the Interior
29 decide to take the land into trust status. The Cowlitz Tribe and Salishan-Mohegan, LLC
30 were granted intervenor status on behalf of the City.
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1 The Board finds inconsistency between City policies and Countywide Planning
2 Policies thus violating RCW 36.70A.100 and .210(1). The Board finds City amendments do
3 not comply with RCW 36.70A.110(4) because they extend urban governmental services to a
4 non-urban area in a way that will encourage urban development. The Board finds the City
5 complied with SEPA. Ordinance No. 2013-11 is remanded to the City of La Center to come
6 into compliance with the GMA.
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8 I. PROCEDURAL BACKGROUND

9 On February 10, 2014, the Board received three Petitions for Review filed by
10 Dragonslayer, Inc. and Michels Development, LLC; Greg and Susan Gilbert; and Clark
11 County (County). The Board consolidated the petitions into Case No. 14-2-0003c entitled
12 Dragonslayer, Inc., et al. v. City of La Center. Petitioners challenge the City's Ordinance
13 No. 2013-11 and 2013 Final Environmental Impact Statement.
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15 A Prehearing Conference was held telephonically on March 4, 2014, wherein
16 Petitioners agreed to coordinate and refine the issues. Based on the Prehearing Conference
17 discussions, six issues were agreed upon with notice from the City that it would file a motion
18 to dismiss some issues. The Board issued a Prehearing Order on March 6, 2014 with the
19 agreed upon issues. On March 10, 2014, Salishan-Mohegan, LLC and the Cowlitz Indian
20 Tribe requested intervention status. No responses or objections were received. The Board
21 granted Salishan-Mohegan, LLC and the Cowlitz Indian Tribe conditional intervenor status
22 on March 21, 2014.
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24 On April 7, 2014, the City filed a Motion to Supplement the Record and a Dispositive
25 Motion Regarding Issues 2, 4.3, and 6.5. Petitioners and the County filed responses to the
26 motions on April 17, 2014. On April 28, 2014, the Board granted the City's Motion to
27 Supplement and deferred ruling on the City's Dispositive Motion until the Hearing on the
28 Merits.
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30 The parties subsequently filed prehearing briefs and exhibits as follows:

- 31 • Petitioner Clark County's Prehearing Brief, filed May 8, 2014 (Clark County's
32 Brief);

- 1 • Prehearing Brief of Petitioners Greg and Susan Gilbert, filed May 8, 2014
- 2 (Gilbert's Brief);
- 3 • Prehearing Brief of Petitioners Dragonslayer, Inc. and Michels Development, filed
- 4 May 8, 2014 (Dragonslayer's Brief);
- 5 • Brief of Intervenor Salishan-Mohegan, LLC and The Cowlitz Indian Tribe, filed
- 6 May 28, 2014 (Intervenors' Brief);
- 7 • Brief of Respondent City of La Center, filed May 28, 2014 (Respondent's Brief);
- 8 • Reply Briefs of Petitioners Greg and Susan Gilbert, Dragonslayer, Inc. and
- 9 Michels Development, LLC and of Clark County were filed on June 6, 2014;
- 10 • Petitioners also filed a Motion to Supplement the Record on June 6, 2014
- 11 requesting the Board supplement the record with proposed Exhibits 123-127.
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14 The Hearing on the Merits was convened on June 13, 2014, at the City of La Center
15 Community Center. Present for the hearing were Board Members William Roehl, Margaret
16 Pageler and Nina Carter, presiding officer. Petitioners were represented by Stacey
17 Bernstein for Dragonslayer and Gilberts and Christine M. Cook for Clark County. The City
18 was represented by Sarah E. Mack. Intervenors Salish-Mohegan, LLC and the Cowlitz
19 Indian Tribe were represented by Stephen W. Horenstein. The hearing provided the Board
20 an opportunity to ask questions clarifying important facts in the case and a better
21 understanding of the parties' legal arguments.

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23 Following the Board Final Decision and Order issued on August 11, 2014, the Board
24 received motions for reconsideration from Respondent City of La Center, Petitioners
25 Dragonslayer, Inc., Michels Development, and Susan Gilbert.¹ Numerous responses to the
26 motions were filed.² The Board issued an Order on Reconsideration and this Amended
27 Final Decision and Order on October 24, 2014.

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30 ¹ Respondent City of La Center's Motion for Reconsideration and Motion for Reconsideration of Petitioners
31 Dragonslayer, Inc., Michels Development and Susan Gilbert Regarding Issue No. 2, both of which were filed
32 on August 21, 2014.

² [Clark County's] Response to [City of LaCenter's] Motion for Reconsideration; [Clark County's] Response to
Reconsideration of Petitioners Dragonslayer, Inc., Michel's Development, LLC, and Greg and Susan Gilbert
Regarding Issue No. 2; Petitioners Dragonslayer, Inc., Michel's Development, LLC, and Greg and Susan

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II. BOARD JURISDICTION

The Board finds the Petitions for Review were timely filed pursuant to RCW 36.70A.290(2). The Board finds Petitioners have standing to appear before the Board, pursuant to RCW 36.70A.280(2). The Board finds it has jurisdiction over the subject matter of the petition pursuant to RCW 36.70A.280(1)(a).

III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF, AND STANDARD OF REVIEW

Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and amendments to them, are presumed valid upon adoption.³ This presumption creates a high threshold for challengers as the burden is on the petitioners to demonstrate that any action taken by the local jurisdiction is not in compliance with the GMA.⁴

The Board is charged with adjudicating GMA compliance and, when necessary, invalidating noncompliant plans and development regulations.⁵ The Growth Management Hearings Board (the Board) is tasked by the legislature with determining compliance with the GMA. The Supreme Court explained in *Lewis County v. Western Washington Growth Management Hearings Board*:⁶

The Board is empowered to determine whether [county] decisions comply with GMA requirements, to remand noncompliant ordinances to [the county], and even to invalidate part or all of a comprehensive plan or development regulation until it is brought into compliance.

Gilbert letter referencing the City of La Center's Motion for Reconsideration; Respondent City of La Center's Answer to Petitioners' Motion for Reconsideration Re. Issue No. 2; Intervenor Salishan-Mohegan, LLC's and the Cowlitz Indian Tribe's Answer to Petitioners' Motion for Reconsideration Re. Issue No. 2, all of which were filed on September 2, 2014. Petitioners' Motion to Strike Answers of Respondent and Intervenor to Petitioners' Motion for Reconsideration Regarding Issue No. 2, filed September 9, 2014.

³ RCW 36.70A.320(1) provides: "[Except for the shoreline element of a comprehensive plan and applicable development regulations] comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption."

⁴ RCW 36.70A.320(2) provides: "[Except when city or county is subject to a Determination of Invalidity] the burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this chapter is not in compliance with the requirements of this chapter."

⁵ RCW 36.70A.280, RCW 36.70A.302.

⁶ 157 Wn.2d 488 at 498, n. 7 (2006).

1 The scope of the Board's review is limited to determining whether a local jurisdiction
2 has achieved compliance with the GMA only with respect to those issues presented in a
3 timely petition for review.⁷ The GMA directs that the Board, after full consideration of the
4 petition, shall determine whether there is compliance with the requirements of the GMA.⁸
5 The Board shall find compliance unless it determines that the local jurisdiction's action is
6 clearly erroneous in view of the entire record before the Board and in light of the goals and
7 requirements of the GMA.⁹ In order to find the local jurisdiction's action clearly erroneous,
8 the Board must be "left with the firm and definite conviction that a mistake has been
9 committed."¹⁰

11 In reviewing the planning decisions of local jurisdictions, the Board is instructed to
12 recognize "the broad range of discretion that may be exercised by counties and cities" and
13 to "grant deference to counties and cities in how they plan for growth."¹¹ However, the City's
14 actions are not boundless; their actions must be consistent with the goals and requirements
15 of the GMA.¹² As to the degree of deference to be granted under the clearly erroneous
16 standard, the Supreme Court has stated:
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20 ⁷ RCW 36.70A.290(1).

21 ⁸ RCW 36.70A.320(3).

22 ⁹ RCW 36.70A.320(3).

23 ¹⁰ *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008) (Citing to *Dept. of Ecology v.*
PUD District No. 1 of Jefferson County, 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe*
v. WWGMHB, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488,
24 497-98, 139 P.3d 1096 (2006).

25 ¹¹ RCW 36.70A.3201 provides, in relevant part: "In recognition of the broad range of discretion that may be
26 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the
27 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements
28 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities
29 to balance priorities and options for action in full consideration of local circumstances. The legislature finds that
30 while this chapter requires local planning to take place within a framework of state goals and requirements, the
31 ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and
32 implementing a county's or city's future rests with that community."

¹² *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000) (Local discretion is bounded by the
goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the
degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: The
amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give
the [jurisdiction's] actions a "critical review" and is a "more intense standard of review" than the arbitrary and
capricious standard. *Id.* at 435, n. 8.

1 The amount [of deference] is neither unlimited nor does it approximate a
2 rubber stamp. It requires the Board to give the [jurisdiction's] actions a
3 "critical review" and is a "more intense standard of review" than the arbitrary
4 and capricious standard.¹³

5 Thus, the burden is on Petitioners to overcome the presumption of validity and demonstrate
6 that the challenged action taken by the City is clearly erroneous in light of the goals and
7 requirements of the GMA.

9 IV. PRELIMINARY MATTERS

10 At the Hearing on the Merits, the Board asked Petitioners, Respondents and
11 Intervenors to present oral arguments regarding two motions:

- 12 • City's Dispositive Motion Regarding Issues 2, 4.3, and 6.5;¹⁴ and
- 13 • Petitioner's Motion to Supplement the Record with Exhibits 123 through 127.¹⁵

14 The City moved to "delete all references to violation of or noncompliance with the La
15 Center Municipal Code in Issues 2, 4.3, and 6.5 because the Board does not have
16 jurisdiction to decide legitimacy of municipal codes "other than those enumerated in RCW
17 36.70A.280."¹⁶ The City claimed Issue 2 should be dismissed because Petitioners did not
18 brief the issue of inconsistency, but instead argued new issues not originally in the Petition
19 for Review. At the HOM, the parties agreed Issue 2 had not been included in Petitioners'
20 briefing and they would not present arguments.

21 The Board **grants** the City's motion to dismiss Issue 2.

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27 ¹³ *Swinomish Indian Tribal Community*, at 435, n.8.

28 ¹⁴ Respondent City of La Center's Dispositive Motion Regarding Issues 2, 4.3, and 6.5 filed on April 7, 2014.

29 ¹⁵ Petitioner's Motion to Supplement the Record, June 6, 2014, with Exs. 123-127. Ex. 123 is the Amicus
30 Curiae Brief of the City of La Center, Washington to the U.S. District Court of Columbia for Case No. 1:12-cv-
31 00849-BJR. Ex. 124 is the 2013 Spring Newsletter from the Cowlitz Indian Tribe. Ex. 125 is the 2014 Spring
32 Newsletter from the Cowlitz Indian Tribe. Ex. 126 is an excerpt from the May 8, 2014 Public Meeting Minutes
from the Washington State Gambling Commission. Ex. 127 is an invoice from the City of La Center to the
Mohegan Tribal Gambling Authority dated July 22, 2013.

¹⁶ Respondent's City of La Center's Dispositive Motion at 1-2 (April 7, 2014).

1 The City requested that references be deleted to the City's municipal code in Issue
2 4.3 Urban Growth and Urban Services and Issue 6.5 SEPA Compliance.¹⁷ The City
3 contends the Legislature restricted the Board jurisdiction to the Growth Management Act
4 and specifically, RCW 36.70A.280 provides the Board shall hear only those petitions
5 alleging non-compliance with GMA, the Shoreline Management Act (RCW 90.58), or the
6 State Environmental Policy Act (RCW 43.21C). The City argues the Board has jurisdiction
7 only over whether a local government complies with those three statutes and shall "only
8 [review] certain type of actions: plans, development regulations, and amendments thereto. .
9 . ." ¹⁸ The City requests that all references to the La Center Municipal Code should be
10 eliminated because "compliance with the requirements of a local ordinance is not one of the
11 enumerated bases for challenging a local government's GMA action before the Board."¹⁹
12

13 Petitioners contend the Board does have jurisdiction to decide if a municipal code is
14 consistent with a jurisdictions' comprehensive land use plan or with statutes under the
15 Board's jurisdiction. "A city's compliance with its development regulation is an important
16 component of complying with the GMA . . . the Board may properly review whether the city's
17 action complied with the city's development regulation."²⁰ Petitioners are not requesting the
18 Board to enforce City codes outside the context of GMA or SEPA compliance.²¹
19

20 The Board reviews whether references to La Center's municipal code in Issue 4 and
21 6 are within the Board's jurisdiction. The cited municipal codes are LCMC 18.120.010 and
22 .050 from these issue statements:
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24 4. Urban Growth and Urban Services: Does the City's approval of the
25 Amendments violate the urban growth criteria of RCW 36.70A.110(3) and (4)
26 and related GMA Goals for urban growth, economic development and urban
27 services, as follows:

28 . . .

29 4.3. by encouraging development without ensuring that adequate public
30 facilities and services are available to support development without

31 ¹⁷ *Id.* at 1.

32 ¹⁸ *Id.* at 3.

¹⁹ *Id.* at 5.

²⁰ Dragonslayer and Gilbert's Response to La Center's Dispositive Motion at 6 (April 7, 2014).

²¹ *Id.* at 6.

1 decreasing current service levels below locally established minimum
2 standards, in violation of RCW 36.70A.020(12) and **LCMC 18.120.050(3)**?
3 [Dragonslayer K, County M]

4 6. SEPA Compliance: Did the City approve the Amendments without
5 applying SEPA requirements as follows:

6 . . .
7 6.5. Did the City's approval of the Amendments fail to comply with RCW
8 43.21C.030(2)(c); **LCMC 18.120.010**; and **LCMC 18.120.050** because the
9 FEIS improperly assumes that the City has the legal authority to provide
10 extraterritorial service to the Tribe's proposed casino resort and fails to
11 adequately evaluate significant conflicts between the proposed sewer
extension, Growth Management Act restrictions, and Clark County planning
policies? [Dragonslayer Q]

12 The Board has jurisdiction to review local governments' actions in regards to their
13 comprehensive plans, development regulations and amendments **as they relate to**
14 **compliance** with the GMA, Shoreline Management Act, and SEPA.²² However, at the
15 Hearing on the Merits, the parties agreed to abandon the reference to municipal codes in
16 these issues.²³

17
18 The Board **grants** the City's request to dismiss references to development
19 regulations in Issues 4.3 and 6.5.

20
21 *Motion to Supplement the Record*

22 Petitioners moved to supplement the record in response to the City's brief which
23 challenges facts in Petitioners' briefs.²⁴ Petitioners' proposed exhibits are "offered for the
24 purpose of rebuttal" and will be necessary and of substantial assistance to the Board in
25 reaching a decision about this case.²⁵ In response, the City and Intervenors object to
26 supplementing the record with the proposed exhibits arguing they were untimely, were not
27 relevant, and would not substantially assist the Board.²⁶

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30 ²² RCW 36.70A.280(1) and RCW 36.70A.300(1).

31 ²³ Hearing on the Merits, Transcript of Proceedings at 12:16, June 13, 2014.

32 ²⁴ Petitioners' Motion to Supplement the Record (June 6, 2014).

²⁵ *Id.* at 3.

²⁶ Hearing on the Merits, Transcript of Proceedings, at 11:21, June 13, 2014.

1 Exhibit 123, the Amicus Brief from the City of La Center to the US District Court,
2 addresses the Court's pending decision about an anticipated tribal reservation and the Final
3 Environmental Impact Statement (FEIS) by the Department of Interior regarding the
4 property. Exhibits 124 and 125 are tribal newsletters with information about the proposed
5 tribal reservation. Exhibit 126 are minutes from the May 8, 2014, Washington State
6 Gambling Commission including a statement from the Mayor of La Center to the
7 Commission regarding the proposed tribal reservation. Exhibit 127 is a bill for services from
8 the City to the Cowlitz Tribe.
9

10 Upon review of the proposed exhibits, the parties' oral arguments and WAC 242-03-
11 565,²⁷ the Board finds Exhibits 123 and 126 are of assistance to the Board and provide
12 more information about the City's Sub-Area land use changes, the status and application of
13 the City's National Pollution Discharge Elimination System (NPDES) permit and the City
14 position before the Washington State Gambling Commission.²⁸ Further, the Cowlitz Tribal
15 newsletters in Exhibits 124 and 125 provide necessary information about the federal court
16 decisions and the proposed sewer line extension. Exhibit 127 is of assistance to the Board
17 because it demonstrates a financial relationship between the City and the Tribe regarding
18 payment for the SEPA analysis for extension of the sewer line. These exhibits assist the
19 Board in understanding the larger context of this case.
20

21 The Board **grants** the Motion to Supplement the Record with Petitioners' Proposed
22 Exhibits 123 through 127.
23

24 ²⁷ WAC 242-03-565. "Motion to supplement the record. Generally, the board will review only documents and
25 exhibits taken from the record developed by the city, county, or state in taking the action that is the subject of
26 review by the board and attached to the briefs of a party. A party by motion may request that the board allow
27 the record to be supplemented with additional evidence. (1) A motion to supplement the record shall be filed
28 by the deadline established in the prehearing order, shall attach a copy of the document, and shall state the
29 reasons why such evidence would be necessary or of substantial assistance to the board in reaching its
30 decision, as specified in RCW 36.70A.290(4). The board may allow a later motion for supplementation on
31 rebuttal or for other good cause shown. (2) Evidence arising subsequent to adoption of the challenged
32 legislation is rarely allowed except when supported by a motion to supplement showing the necessity of such
evidence to the board's decision concerning invalidity. (3) Exhibits attached to motions to supplement shall be
cross-referenced in the briefs for the hearing on the merits, unless the presiding officer, in the order on motion
to supplement, requires copies of supplemental exhibits to be attached also to the hearing on the merits brief."
(emphasis added)

²⁸ Petitioners' Motion to Supplement the Record, Exs. 123 at 4 and 126 at 2 (June 6, 2014).

V. LEGAL ISSUES, DISCUSSION AND ANALYSIS

The Challenged Action

The City amended its comprehensive plan, capital facilities plan and development regulations to allow, under certain circumstances, a sewer line extension to property outside the City's UGA near Interstate 5. The property in question is 152 acres now zoned Agriculture-20. In 2002 the Cowlitz Indian Tribe applied to the Bureau of Indian Affairs asking that the property be taken into trust status. Federal Court cases are pending regarding the transfer to trust land status and the adequacy of environmental impact statements. The City has amended its comprehensive plan, capital facilities plan and development regulations to prepare for the potential development of the land as a casino resort, Recreational Vehicle Park, Tribal government buildings, elder housing, and a cultural center. The City's efforts culminated in December 2013 with the adoption of Ordinance 2013-0011.

The Petitioners either own property near the potential tribal trust lands or have businesses located in the City of La Center in Clark County. Petitioners challenge the City's action arguing it is premature, does not address all environmental impacts, and is not in compliance with the GMA. The specific challenge involves extending the City's sewer service beyond the UGA to lands that will not be subject to the jurisdiction of the GMA if the Bureau of Indian Affairs (BIA) and the U.S. Department of the Interior decide to take the land into trust status.

Ordinance 2013-011 amended La Center's Urban Area Comprehensive Plan,²⁹ the La Center Urban Area Capital Facilities Plan,³⁰ and La Center Development Regulations

²⁹ Dragonslayer's Petition for Review, Ex. 1, Staff Report, Ex. A at 1. Under WAC 242-03-630(4) the Board takes official notice of the City's Comprehensive Plan which can be found at: http://www.ci.lacenter.wa.us/city_departments/pdfs/1.ComprehensivePlan%202008.pdf

³⁰ *Id.* at 11. Under WAC 242-03-630(4), the Board takes official notice of the City's Capital Facilities Plan which can be found at: http://www.ci.lacenter.wa.us/city_departments/pdfs/CAP%20FAC%20TEXT%202008%20-%20ADOPTED.pdf

1 (LCMC 13.10.370).³¹ As summarized by the City staff report, the changes to the City
2 Comprehensive Plan include the following:³²

- 3 • Policy 1.1.3: Clarifies that this policy applies only within the city limits.
- 4 • Policy 1.3.1: Identifies the benefits of commercial development in and adjacent to
- 5 La Center, including increased commercial activity within La Center.
- 6 • Policy 1.4.1: Acknowledges that annexation of the La Center Junction area has
- 7 already been accomplished.
- 8 • Policy 1.4.3: Clarifies planning objectives for the I-5 Junction area; specifies that
- 9 various objectives apply within city limits; endorses use of development
- 10 agreements and other tools for construction of infrastructure improvements;
- 11 encourages development within city limits that complements the development and
- 12 uses in downtown La Center; and provides that the City shall evaluate
- 13 opportunities to coordinate with the Cowlitz Tribe regarding eventual development
- 14 of the Cowlitz Reservation, including extension of City sewer service.
- 15 • Policy 4.1.4: Includes affected tribal governments in the list of entities with which
- 16 the City will coordinate the provision of public facilities and services.
- 17 • Policy 4.2.3: Provides that City will not extend sewer service outside the UGA
- 18 except in one of two circumstances: (1) to correct a public health hazard; or (2) to
- 19 serve land that is owned or held in trust by the federal government that is not
- 20 subject to the GMA.
- 21 • Policy 4.2.5: Corrects a typographical error by changing “affect” to “effect.”
- 22 • Policy 4.2.8: Clarifies that annexation requirements apply only inside the City’s
- 23 UGA, and that annexation is not required in connection with extension of sewer
- 24 service to federal lands; provides for agreements in lieu of annexation.
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31 ³¹ Dragonslayer's Petition for Review, Ex. 1, Staff Report, Ex. A at 14. Under WAC 242-03-630(4), the Board
32 takes official notice of LCMC 13.10.370 which can be found at: <http://www.codepublishing.com/wa/lacenter/>
³² *Id.* at 3 and at <http://www.ci.lacenter.wa.us/community/cowlitz/pdfs/Ordinance%202013-011%2012.11.2013%20Council%20Meeting.pdf>.

- Policy 8.1.1: Deletes unnecessary language identical to GMA statute; recognizes that lands held in trust or owned by the federal government are not subject to the GMA; adds policy that the City will not allow or facilitate urban development on land that is subject to the GMA and designated as rural.
- Policy 8.2.3: Clarifies that annexation requirements for urban services apply only to privately-owned areas within the UGA, and that annexation is not required for lands not subject to the GMA.
- Policy 8.2.4: Clarifies that annexation requirements for sewer service do not apply to federal lands; encourages coordination between the City, Clark County and Clark Public Utilities in provision of urban service within the UGA; reaffirms City's intent to be the exclusive provider of sewer service within its UGA.
- Policy 8.3.3: Clarifies that this policy applies only within the City's UGA.
- Policy 8.3.4: Clarifies that this policy applies only within the City's UGA.
- Policy 8.3.7: Deletes unnecessary language because annexation has already occurred.

The City also amended its Capital Facilities Plan to update the General Sewer Plan by incorporating it into Appendix B of the Capital Facilities Plan. It amended the Capital Facilities Plan policies to be consistent with the Comprehensive Plan policy amendments described above. Lastly, the City amended its Municipal Code (LCMC 13.10.370) to conform with changes to the Comprehensive Plan and Capital Facilities Plan. This development regulation now has two conditions under which the City would extend sewers beyond the UGA: for public health reasons and to connect with federal lands not subject to the GMA. The development regulation specifies that an agreement to provide sewer service to a tribe or federal agency would prohibit that agency or tribe from connecting the service to GMA rural lands.

1 **GMA Issues**

2 **Issue 1: Inter-jurisdictional Consistency and Coordination**

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4 Did the City approve the Amendments without ensuring coordination and
5 consistency between the City's comprehensive plan policies and the
6 comprehensive plan and county-wide planning policies (CPP) of Clark
7 County in violation of RCW 36.70A.100, RCW 36.70A.130, RCW
8 36.70A.210(1), RCW 36.70A.020(11), RCW 36.70A.010, and RCW
36.70A.011 as follows:

9 1.1. by failing to cooperate and coordinate its actions with Clark County, and
10 by adopting comprehensive plan provisions that are neither coordinated nor
11 consistent with the Clark County Plan contrary to County-wide Planning
12 Policies 1.1.11, 1.1.12, 6.0.2, 6.0.6, 6.3.8, and 6.3.10? [County A, C, E, G;
13 Dragonslayer A, C, E]

14 1.2. by failing to cooperate to ensure the preservation and protection of
15 natural resources, critical areas, open spaces, and recreational lands within
16 and near the urban areas through adequate and compatible policies and
17 regulations contrary to County-wide Planning Policy 3.0.2? [County B]

18 1.3. by encouraging development that erodes and damages the rural sense
19 of community and quality of life and the rural character that the GMA and the
20 Clark County Plan seek to promote in rural, agricultural Clark County,
contrary to County-wide Planning Policy 3.0.1? [Dragonslayer F, County H]

21 *Applicable Laws:*

22
23 **RCW 36.70A.010 Legislative findings.**

24 The legislature finds that uncoordinated and unplanned growth, together with
25 a lack of common goals expressing the public's interest in the conservation
26 and the wise use of our lands, pose a threat to the environment, sustainable
27 economic development, and the health, safety, and high quality of life
28 enjoyed by residents of this state. It is in the public interest that citizens,
29 communities, local governments, and the private sector cooperate and
30 coordinate with one another in comprehensive land use planning. Further,
31 the legislature finds that it is in the public interest that economic development
32 programs be shared with communities experiencing insufficient economic
growth.

1 **RCW 36.70A.020 Planning goals.**

2 (11) Citizen participation and coordination. Encourage the involvement of
3 citizens in the planning process and ensure coordination between
4 communities and jurisdictions to reconcile conflicts. (emphasis added)

5 **RCW 36.70A.100 Comprehensive plans — Must be coordinated.**

6
7 The comprehensive plan of each county or city that is adopted pursuant to
8 RCW 36.70A.040 shall be coordinated with, and consistent with, the
9 comprehensive plans adopted pursuant to RCW 36.70A.040 of other
10 counties or cities with which the county or city has, in part, common borders
11 or related regional issues.

12 **RCW 36.70A.130 Comprehensive plans — Review procedures and schedules —**
13 **Amendments.**

14 (1)(d) Any amendment of or revision to a comprehensive land use plan shall
15 conform to this chapter. Any amendment of or revision to development
16 regulations shall be consistent with and implement the comprehensive plan.

17 **RCW 36.70A.210 Countywide planning policies.**

18 (1) The legislature recognizes that counties are regional governments within
19 their boundaries, and cities are primary providers of urban governmental
20 services within urban growth areas. For the purposes of this section, a
21 "countywide planning policy" is a written policy statement or statements used
22 solely for establishing a countywide framework from which county and city
23 comprehensive plans are developed and adopted pursuant to this chapter.
24 This framework shall ensure that city and county comprehensive plans are
25 consistent as required in RCW 36.70A.100. Nothing in this section shall be
26 construed to alter the land-use powers of cities. (emphasis added)

27 *Position of the Petitioners.*³³

28 Petitioner Clark County argues RCW 36.70A.100, .130(1)(d) and .210 require La

29
30 ³³ Petitioner Clark County's Prehearing Brief presented the argument on this issue. Petitioners Dragonslayer,
31 Inc. and Michels Development, LLC adopt and incorporate by reference the briefing and arguments regarding
32 this issue presented by Petitioner Clark County. See Prehearing Brief of Dragonslayer, Inc. and Michels
33 Development, LLC at 2. Petitioners Greg and Susan Gilbert adopt and incorporate by reference arguments
34 regarding this issue presented by Petitioner Clark County. See Prehearing Brief of Greg and Susan Gilbert at
35 14.

1 Center's comprehensive plan and amendments thereto be "coordinated and consistent with
2 Clark County's plan and conform to GMA, and directs that cities and counties together
3 create countywide planning policies."³⁴ In 2007, the County updated its comprehensive land
4 use plan by including an introductory chapter with Countywide Planning Policies (CPPs) to
5 form an over-arching "Community Framework" for eleven topics (e.g., land use, housing,
6 transportation, etc.). The CPPs were intended to guide and implement a 20-year vision for
7 the County and its cities.³⁵ The County contends the City's Ordinance 2013-011 does not
8 comport with the over-arching Countywide Planning Policies. According to the County,
9 Ordinance 2013-011 encourages sprawl or leapfrog development, contemplates
10 extraterritorial provision of urban services and encourages commercial development
11 adjacent to the City and not within the Urban Growth Area.³⁶

12
13 The County argues Ordinance 2013-011 is inconsistent with and thwarts
14 implementation of CPP 1.1.12, 3.0.2, 6.0.2, 6.0.6, 6.3.8, and 6.3.10.³⁷ When the County
15 updated its comprehensive plan, the cities agreed with the CPPs to coordinate planning
16 within Clark County and to ensure "public facilities and services are consistent and designed
17 to implement adopted comprehensive plans."³⁸ Despite the County urging the City to take a
18 different course, the City amended its own policies to provide extraterritorial urban services
19
20

21
22 ³⁴ Clark County's Prehearing Brief at 5-8.

23 ³⁵ Clark County Comprehensive Plan 2004-2024 updated 2007. See chapter on *The Community Framework*
24 *Plan* at 1 "In order to achieve the vision of Clark County as a collection of distinct communities surrounded by
25 open space, agriculture, and forest uses, Clark County and each of the cities and will adopt certain types of
26 policies. The general framework policies are outlined below by element of the Comprehensive Growth
27 Management Plan (20-Year Plan). The process-oriented county-wide planning policies which were adopted by
28 the county in August 1992, and amended in 2000, 2004 and 2007 are found in each applicable plan element.
29 The framework policies guide implementation of the vision of Clark County's future preferred by many of its
30 residents. The policies provide a framework within which the county can bridge the gap between the general
31 land use concepts presented in the Community Framework Plan and the detailed (parcel level) 20-Year Plan
32 required by the State Growth Management Act. Supplemental to the Community Framework Plan, the county
and each jurisdiction, can develop more specific policies for the their required 20-year time frame, in order to
ensure that the resulting plans will work to achieve the overall vision of the future for Clark County."

³⁶ Clark County's Prehearing Brief at 7.

³⁷ *Id.* at 7-9. NOTE: In its motion for reconsideration, the City noted that 6.3.8 was not a county-wide planning
policy. The Board agreed and amended its decision to reference the 20-Year County Planning Policy 6.3.8;
see below on p. 22.

³⁸ *Id.* at 8.

1 and encourage growth outside the UGA contrary to the CPPs.³⁹ For these reasons, the
2 County contends the City should be found non-compliant with RCW 36.70A.100, RCW
3 36.70A.130(1)(d), and RCW 36.70A.210(1). The County reiterated its position in its reply
4 brief.⁴⁰

5
6 *Respondent and Intervenor:*⁴¹

7 The City responds the CPP framework is to ensure consistency, but it also argues
8 “Jurisdictions can have competing visions for property, but **inconsistency** requires that
9 provisions actually thwart the achievement of competing policy.”⁴² (emphasis from original)
10 The City argues Ordinance 2013-011 is “not facially inconsistent with CPP[s]” and that the
11 County did not make sufficient effort to facially compare and contrast the actual language
12 between the CPPs and the City’s amended text to show how they were contradictory.⁴³ The
13 City states none of its amendments are inconsistent with the CPPs and responds as
14 follows:⁴⁴

- 15
16 • Policy 1.1.3 clarifies the City’s standards for urban development apply to
17 land within the City limits and does not authorize urban development
18 beyond the UGA.
- 19 • Policy 1.3.1 recognizes that commercial development in and adjacent to La
20 Center provides various benefits, including increased commercial activity
21 and does not authorize development beyond the UGA.
- 22 • Policy 1.4.3(h) clarifies City planning objectives for the I-5 Interchange
23 area, including evaluation of “opportunities to coordinate” with the Cowlitz
24 Tribe regarding eventual development of the Cowlitz Reservation, including
25 extension of City sewer service.
- 26 • Policy 4.2.3 prohibits city sewer service beyond the La Center UGA, except
27 in one of two circumstances, and then only upon approval by the City
28 Council: (a) to correct a declared public health hazard, or (b) to serve land
29 that is owned or held in trust by the federal government that is not subject

30 ³⁹ *Id.* at 8.

31 ⁴⁰ Petitioners Dragonslayer and Gilbert incorporated by reference the County’s reply arguments regarding
32 Issue 1.

⁴¹ Intervenor Salishan-Mohegan and the Cowlitz Tribe did not submit arguments on Issue 1.

⁴² Brief of Respondent City of La Center at 8.

⁴³ *Id.* at 9.

⁴⁴ *Id.* at 9-13.

1 to the GMA. No reference is made to the Cowlitz property in this
2 statement.

- 3 • Policy 8.1.1 adopted the same wording as the County's CPP 6.0.2 which
4 provides that plans for public services must be coordinated with various
5 land uses.⁴⁵

6 In summary, the City contends its amendments establish standards to be used when
7 evaluating future proposals to extend City services and are not inconsistent with the
8 County's coordination policies.

9
10 *Board Discussion, Analysis and Decision*

11 Countywide planning policies are a key element of the GMA consistency framework.
12 GMA Goal 11 provides that counties and cities are to "ensure coordination between
13 communities and jurisdictions to reconcile conflicts."⁴⁶ To implement this goal, RCW
14 36.70A.100 provides that "[t]he comprehensive plan of each county or city that is adopted
15 pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the
16 comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with
17 which the county or city has, in part, common borders or related regional issues."
18 Coordination and consistency between a county and its cities is provided in the GMA
19 through the provision for countywide planning policies in RCW 36.70A.210.

20
21 RCW 36.70A.210(1) establishes county-wide planning policies (CPPs) that provide a
22 "framework [that] shall ensure that city and county comprehensive plans are consistent as
23 required in RCW 36.70A.100."⁴⁷ The Department of Commerce's guidelines at WAC 365-
24 196-305(3) state categorically: "The comprehensive plans of . . . cities **must comply** with
25

26 ⁴⁵ Petitioner Clark County's Prehearing Brief at 7-8 and City of La Center Staff Report, 2013 Comprehensive
27 Plan Amendments Ordinance 2013-011 at 10, *Urban Growth and Annexation Policies* 8.1.1, "In cooperation
28 with the County, other municipalities, and special districts, La Center shall establish an Urban Growth Area as
29 provided under the Growth Management Act. Lands held in trust or owned by the federal government are not
30 subject to the Growth Management Act. The City will not allow or facilitate urban development on land that is
31 subject to the GMA and designated as rural, within which urban growth shall be encouraged and outside of
32 which growth may occur only if it is not urban in nature. The Urban Growth Area may include territory located
outside the City if such territory is characterized by urban growth or is adjacent to areas characterized by
urban growth."

⁴⁶ RCW 36.70A.020(11).

⁴⁷ RCW 36.70A.210(1).

1 both the countywide planning policies and the [GMA]" (emphasis added). Our Supreme
2 Court has definitively ruled that the "framework to ensure consistency" which is provided by
3 CPPs is binding on local jurisdictions. In *King County v. Central Puget Sound GMHB*,⁴⁸ the
4 Court addressed the question "whether the directive provisions of CPPs must be binding in
5 order to fulfill their purpose under the GMA." The Court reasoned:

- 6 • The GMA requires county and city comprehensive plans to be consistent
7 with each other in order to ensure harmonious land use planning. RCW
8 36.70A.100.
- 9 • RCW 36.70A.210(1) provides that "a 'county-wide planning policy [CPP]' is
10 a written policy statement or statements used solely for establishing a
11 county-wide framework from which county and city comprehensive plans
12 are developed and adopted pursuant to this chapter. This framework **shall**
13 **ensure that city and county comprehensive plans are consistent** as
14 required in RCW 36.70A.100." (emphasis added)
- 15 • Local governments are required to adopt regionally developed CPPs, from
16 which local comprehensive plans, and then development regulations, are
17 enacted. The CPPs are thus the major tool provided in the GMA to ensure
18 that the comprehensive plans of each city within a county agree with each
19 other.
- 20 • If the CPPs served merely as a nonbinding guide, municipalities would be
21 at liberty to reject CPP provisions and the CPPs could not ensure
22 consistency between local comprehensive plans.

23 The Court concluded that CPPs are binding on local jurisdictions and local
24 comprehensive plan amendments may not contravene GMA-compliant CPPs. RCW
25 36.70A.100 establishes that city plans "shall be coordinated with and consistent with" the
26 comprehensive plan of the county with which it has common borders. Any amendment or
27 revision to the city plan "shall conform to this chapter." (RCW 36.70A.130(1)(d)). In *Chevron*
28 *USA Inc. v. Hearings Board*, the Court of Appeals explained: "Consistency means that
29 provisions are compatible with each other – that they fit together properly. In other words,
30 one provision may not thwart another."⁴⁹ WAC 365-196-210(7) defines consistency as:

31 ⁴⁸ *King County v. Central Puget Sound Bd.*, 138 Wn.2d 161, 175-176, 979 P.2d 374 (1999).

32 ⁴⁹ 123 Wn. App. 161, 167; see *City of Shoreline v. Snohomish County*, Coordinated Cases 09-3-0012c and 10-3-0011c, Final Decision and Order (May 17, 2011), at 13: County's designation of an urban center that would

1 "Consistency" means that no feature of a plan or regulation is incompatible
2 with any other feature of a plan or regulation. Consistency is indicative of a
3 capacity for orderly integration or operation with other elements in a system.

4 Consistency and coordination between the plans of local jurisdictions, the Supreme Court
5 explained, are necessary to "ensure harmonious planning."⁵⁰

6 With this in mind, the Board reviewed the City's amendments and Petitioners'
7 arguments. The Board notes the County's Comprehensive Plan does contain Countywide
8 Planning Policies (CPP) under its Community Vision chapter.⁵¹ The Board reviews the
9 City's amendments for inconsistencies with CPP 1.1.12; 3.0.2; 6.0.6; 6.3.8⁵² and 6.3.10.
10 Clark County's 2007 Comprehensive Plan reflects Legislative requirements for countywide
11 planning policies:
12

13 In 1991 the legislature amended the GMA to require adoption of "county-
14 wide" planning policies that would provide a procedural framework for
15 coordinated production of comprehensive plans.⁵³

16 The County's Comprehensive Land Use Plan includes Countywide Planning Policies
17 (CPPs) which are intended to provide a framework to ensure consistency between County
18 and city comprehensive plans.⁵⁴ Regarding land use policies and coordination, the
19 County's Comprehensive Land Use Plan has CPPs require the following:⁵⁵
20

21 CPP 1.1.12 Coordination of land use planning and development:

- 22 • Clark County and each municipality shall cooperatively prepare land use
23 and transportation plans and consistent development guidelines for the
24 urban area.
- 25 • Comprehensive Plans must be coordinated. The comprehensive plan of

26 cause adjacent city's transportation and capital facilities plans to be out of compliance with GMA violated the
27 inter-jurisdictional consistency requirement of RCW 36.70A.110.

28 ⁵⁰ *King County v. Central Puget Sound Bd.*, 138 Wn.2d 161, 175-176, 979 P.2d 374 (1999).

29 ⁵¹ Clark County 2007 Comprehensive Plan 2004-2024 at 1-1. [http://www.clark.wa.gov/planning/comp_plan/](http://www.clark.wa.gov/planning/comp_plan/documents/WebVersion_AmORD2012-12-20.pdf)
30 [documents/WebVersion_AmORD2012-12-20.pdf](http://www.clark.wa.gov/planning/comp_plan/documents/WebVersion_AmORD2012-12-20.pdf). The Board takes official notice of the County's 2007
31 Comprehensive Plan pursuant to WAC 242-03-630(4).

32 ⁵² Upon reconsideration, the Board agreed with the City that 6.3.8 was a County 20-Year Planning Policy and
not a County-wide Planning Policy. Thus the Board amends its decision regarding 20-Year Planning Policy
6.3.8 as shown below.

⁵³ *Id.* at I-1.

⁵⁴ *Id.* at I-5.

⁵⁵ *Id.* at chapter 1, Land Use Element at 1-21.

1 each county or city shall be coordinated with, and consistent with, the
2 Comprehensive Plans adopted by other counties or cities with which Clark
3 County or city has, in part, common borders or related regional issues.
4 The city and Clark County shall play partnership roles in the production of
5 plans which provide the opportunity for public and mutual participation,
6 review and comment.

- Urban development shall be limited to areas designated by the urban growth boundary. Clark County and each local jurisdiction urban areas would have a higher average density than currently exists, approximately 4, 6 to 8, units per net residential acre depending on the specific urban area. No more than 75 percent of the new housing stock would be of a single product type (e.g., single-family detached residential or attached multi-family). This would not apply to the Yacolt urban growth area due to wastewater management issues.

12 The County contends the City's amendments are inconsistent with CPP 1.1.12. The City's
13 Land Use Policy 1.1.3 amendment provides:

14 **Land Use Policy 1.1.3 – General Development**

16 Development within the city limits of La Center shall occur in a logical
17 manner which allows for orderly and efficient provision of roads, sewer and
18 water, and other services. Within its city limits, La Center shall discourage
19 sprawl or leapfrog development patterns inconsistent with its growth
20 objectives.

21 Land Use Policy 1.1.3 does not allow urban development outside the urban growth area nor
22 does it allow leapfrog development outside the urban growth area. Petitioner's arguments
23 are not persuasive regarding City Land Use Policy 1.1.3. The Board finds the Petitioners
24 have failed to establish an inconsistency between City Land Use Policy 1.1.3 and CPP
25 1.1.12.
26

27 However, the Board finds inconsistency between City Policy 1.3.1 and County-wide
28 Planning Policy 1.1.12.⁵⁶ With Policy 1.3.1, the City encourages commercial development
29

30 ⁵⁶ **City Policy: 1.3.1 Commercial Development**

31 Where appropriate, commercial development in and adjacent to La Center shall be encouraged as it
32 provides some or all of the following benefits:

- a) Provide employment or economic opportunities for the people of La Center and surrounding areas.
- b) Provide goods or service for the people of La Center and surrounding area.

1 “adjacent to” La Center while the County’s CPP 1.1.12 specifies that “Urban development
2 shall be limited to areas within the UGA.”⁵⁷ The Board finds that City Policy 1.3.1
3 contradicts CPP 1.1.12 and thus violates RCW 36.70A.100 and .210(1) because these
4 statutes require county and city comprehensive plans to be coordinated and consistent.⁵⁸

5 Amendments to City Policy 1.4.3(h) and City Policy 4.2.3 concern land abutting the
6 City’s UGA and sewer extensions:
7

8 **City Policy 1.4.3(h)** The City shall evaluate opportunities to coordinate with
9 the Cowlitz Tribe regarding eventual development of the Cowlitz Tribe
10 Reservation adjacent to the City’s corporate limits, including extension of City
11 sewer service.

12 **City Policy 4.2.3** The City of La Center shall not extend sewer service
13 outside of the La Center UGA, except to address significant public health
14 hazards, without the express written consent of the La Center City Council.
15 except in one of the following circumstances, and then only upon written
16 consent of the La Center City Council:

17 a) To correct a declared public health hazard, in which case service may be
18 extended only to the health hazard area, with no sewer connections within
19 the intervening or surrounding rural areas; or
20 b) To serve land abutting the City’s municipal boundary or UGA boundary
21 that is owned or held in trust by the federal government and not subject to

22 c) Provide tax revenue for the City of La Center.

23 d) Increased commercial activity within La Center. (italicized emphasis added)

24 **County-wide Planning Policy 1.1.12**

25 Coordination of land use planning and development:

- 26 • Clark County and each municipality shall cooperatively prepare land use and transportation plans and
27 consistent development guidelines for the urban area.
28 • Comprehensive Plans must be coordinated. The comprehensive plan of each county or city shall be
29 coordinated with, and consistent with, the comprehensive plans adopted by other counties or cities with
30 which Clark County or city has, in part, common borders or related regional issues. The city and Clark
31 County shall play partnership roles in the production of plans which provide the opportunity for public
32 and mutual participation, review and comment.

...• Urban development shall be limited to areas designated by the urban growth boundary. Clark
County and each local jurisdiction urban areas would have a higher average density than currently
exists, approximately 4, 6 to 8, units per net residential acre depending on the specific urban area. No
more than 75 percent of the new housing stock would be of a single product type (e.g., single-family
detached residential or attached multi-family). This would not apply to the Yacolt urban growth area due
to wastewater management issues. (Underline emphasis added)

⁵⁷ Clark County Prehearing Brief at 7.

⁵⁸ See Order Granting Reconsideration, October 24, 2014 at 3, n. 5 which deletes reference to a non-existent
subsection (1) in RCW 36.70A.100.

1 the Growth Management Act, e.g. land within the reservation of a federally
2 acknowledged Indian Tribe. Such land is not subject to restrictions on urban
3 service delivery under the GMA or other state or local laws, policies, or
4 regulations. In such circumstances the City Council shall require a written
5 agreement that provides for payment of infrastructure costs to serve the
6 federal property or trust land, and prohibits the recipient of sewer service
7 from providing sewer connections to serve any rural area subject to the
8 GMA. The City Council may include in such agreement a reasonable cap on
9 the amount of treatment capacity allocated to the recipient, and provide for
10 amendment to expand the amount of allocated treatment capacity based
11 upon future expansion of wastewater treatment plant capacity. The City
12 Council may also require in such agreement an enforceable guarantee that
13 only federal property or trust land will be allowed access to the City's sewer
14 system. (emphasis in original)

15 Upon Reconsideration, the Board finds that read together these two policies are
16 inconsistent with 20-year Planning Policy 6.3.8 because they allow the City to evaluate
17 opportunities in connection with developing land adjacent to the city limits and extending
18 sewer service to land outside the UGA. 20-year Planning Policy 6.3.8 prohibits sewer
19 extensions except in response to health hazards or under limited exceptions, not including
20 service to tribal lands:

21 **20-year Planning Policy 6.3.8**

22 Extension of public sewer service shall not be permitted outside urban
23 growth areas, except in response to documented health hazards; or to
24 provide public sewer to regional park facilities, K-12 public schools, in
25 designated rural centers; or where the county has contractually committed to
26 permit public sewer connection. (emphasis added)

27 It is evident that City Policies 1.4.3(h) and 4.2.3 would allow sewer extension and urban
28 development to occur beyond the City's UGA. The Board finds that City Policies 1.4.3(h)
29 and 4.2.3(b) conflict with 20-year Planning Policy 6.3.8 and thus violate RCW 36.70A.100
30 because "the comprehensive plan of each county or city . . . shall be coordinated with, and
31
32

1 consistent with, the comprehensive plans . . . of other counties or cities with which the
2 county or city has, in part, common borders or related regional issues.”⁵⁹

3 Upon further review during its reconsideration deliberations, the Board also found
4 that CPP 1.1.12 seeks to insure urban development is limited to areas designated by the
5 urban growth boundary. Amended City Policies 1.4.3(h) and 4.2.3 directly conflict with
6 County-wide Planning Policy 1.1.12 as the amended policies contemplate the extension of
7 urban services beyond the La Center urban growth boundary.
8

9 Thus, in summary for Issue 1, Petitioners’ met their burden of proof demonstrating
10 that City Policy 1.3.1 is inconsistent with CPP 1.1.12. Further, upon reconsideration, the
11 Board finds that City policies 1.4.3(h) and 4.2.3(b) conflict with both the 20-Year Planning
12 Policy 6.3.8 and conflict with the County-wide Planning Policy 1.1.12. Thus, they violate
13 RCW 36.70A.100 and RCW 36.70A.210(1). The former mandates that the comprehensive
14 plan of each county shall be coordinated with, and consistent with, the comprehensive plans
15 of cities with which the county has common borders or related regional issues while the
16 latter requires consistency of city plans with county-wide planning policies.
17

18 19 **Issue 2: Internal Consistency**

20 Did the City’s approval of the Amendments amend its development
21 regulations without assuring consistency with comprehensive plan standards
22 in violation of RCW 36.70A.130(1)(d)? [Dragonslayer B, County D]

23 At the hearing on the merits, all parties agreed the development regulations in Issue
24 2 were not being contested.

25 Upon request for reconsideration by the petitioners, the Board found all of the
26 amendments referenced by the petitioners in their briefing and argument in regards to Issue
27 2 are comprehensive plan amendments. But Issue 2 specifically challenges amendments to
28 the City’s development regulations: “Did the City ... amend its development regulations
29 without assuring consistency with comprehensive plan standards” (emphasis added). None
30 of the amendments cited and discussed in the Petitioners’ brief under Issue 2 are
31
32

⁵⁹ See GMHB Order Granting Reconsideration, October 24, 2014 at 3.

1 *development regulations*. These petitioners are in fact arguing the referenced
2 comprehensive plan policies are internally inconsistent or non-compliant with the GMA, an
3 argument that possibly could have been raised under RCW 36.70A.130(1)(d)'s first
4 sentence, and definitely could be raised under RCW 36.70A.070, had the Petitioners' issue
5 statement referenced comprehensive plan amendments.

6
7 On reconsideration, the Board finds the Dragonslayer petitioners failed to establish a
8 violation of RCW 36.70A.130(1)(d) in regards to amendment of development regulations as
9 set forth in Issue 2.⁶⁰

10
11 **Issue 3: Preservation of Agricultural Lands**

12 Did the City violate its duty under RCW 36.70A.020(8), RCW 36.70A.060(1);
13 RCW 36.70A.177; RCW 43.21C.011; and RCW 43.21C.030 to conserve and
14 protect natural resource lands, including agricultural lands, as follows:

15 3.1. by approving the Amendments without addressing the likely and
16 foreseeable significant and adverse environmental impacts that would result
17 to natural resource lands underlying and surrounding the land proposed for a
tribal casino outside a designated UGA? [Dragonslayer D, County F]

18 3.2. by improperly encouraging uses incompatible with agriculture?
19 [Dragonslayer I, County K]

20 *Applicable Laws:*

21
22 **RCW 36.70A.020 Planning goals.**

23 (8) Natural resource industries. Maintain and enhance natural resource-
24 based industries, including productive timber, agricultural, and fisheries
25 industries. Encourage the conservation of productive forest lands and
26 productive agricultural lands, and discourage incompatible uses.

27 **RCW 36.70A.060 Natural resource lands and critical areas — Development**
28 **regulations.**

29 (1)(a) Except as provided in *RCW 36.70A.1701, each county that is required
30 or chooses to plan under RCW 36.70A.040, and each city within such
31 county, shall adopt development regulations on or before September 1,
32

⁶⁰ See GMHB Order Granting Reconsideration, October 24, 2014 at 10.

1 1991, to assure the conservation of agricultural, forest, and mineral resource
2 lands designated under RCW 36.70A.170.

3 **RCW 36.70A.177 Agricultural lands — Innovative zoning techniques —**
4 **Accessory uses.**

5 (1) A county or a city may use a variety of innovative zoning techniques in
6 areas designated as agricultural lands of long-term commercial significance
7 under RCW 36.70A.170. The innovative zoning techniques should be
8 designed to conserve agricultural lands and encourage the agricultural
9 economy. Except as provided in subsection (3) of this section, a county or
10 city should encourage nonagricultural uses to be limited to lands with poor
11 soils or otherwise not suitable for agricultural purposes.

12 **RCW 43.21C.011 Finding — Preservation and conservation of agricultural lands**
13 **RCW 43.21C.030 Guidelines for state agencies, local governments —**
14 **Statements**

15 *Position of the Petitioners.*⁶¹

16 Petitioner Gilbert contends the GMA obligates the City to assure the conservation of
17 agricultural land. The Cowlitz property is designated as agricultural land pursuant to RCW
18 36.70A.177 and zoned Agriculture 20. Petitioners claim the City seeks to encourage urban
19 facilities and promote urban land uses on the Cowlitz property that are incompatible with
20 agricultural use. They argue the City's amendments pre-authorize and enable the City to
21 provide urban sewer services to the agricultural property as soon as it is placed into federal
22 trust for the Cowlitz Tribe, thereby violating its duty to preserve agricultural lands.⁶² The
23 *Soccer Fields* decision is cited to bolster their arguments that the City "may not undermine
24 the Act's agricultural conservation mandate by adopting . . . amendments that allow the
25 conversion of entire parcels of prime agricultural soils to an unrelated use."⁶³
26
27

28
29 ⁶¹ Petitioners Clark County, Dragonslayer, Inc. and Michels Development, LLC adopt and incorporate by
30 reference the briefing and arguments presented by Petitioner Gilbert.

31 ⁶² Petitioner Gilbert Prehearing Brief at 19-20.

32 ⁶³ *Soccer Fields*, 142 Wn.2d at 561 "...the County may not then undermine the Act's agricultural conservation
mandate by adopting "innovative" amendments that allow the conversion of entire parcels of prime agricultural
soils to an unrelated use. The explicit purpose of RCW 36.70A.177 is to provide for creative alternatives that
conserve agricultural lands and maintain and enhance the agricultural industry."

1 *Respondent and Intervenor*s.⁶⁴

2 The City responds its policy amendments do not “pre-authorize” or “facilitate”
3 conversion of agricultural land. Instead, the City would extend city sewer service only to
4 address public health concerns or to serve federal property that is no longer subject to the
5 GMA. The federal acquisition, if and when it occurs, would remove the GMA “agricultural”
6 designation from the site. Clark County’s GMA agricultural land designation would not apply
7 to lands under federal jurisdiction and the lands would not be subject to the GMA.
8 Accordingly, the City contends it did not violate the GMA.
9

10 *Board Analysis and Decision:*

11 Petitioner Gilbert states the “City’s action substantially interferes with the GMA’s goal
12 of maintaining and enhancing agricultural industry,” but Petitioners do not cite specific GMA
13 statutes violated by the City nor offer legal arguments documenting the land was de-
14 designated from agricultural land. The City’s Ordinance does not de-designate agricultural
15 land. While the City’s action may certainly facilitate the future de-designation of agricultural
16 lands, the Board does not find a violation of GMA.
17

18 The Board finds the Petitioners failed to brief and argue the GMA claims in Issue 3
19 and they are deemed abandoned. The Board dismisses Issue 3.
20

21 **Issue 4: Urban Growth and Urban Services:**

22 Does the City’s approval of the Amendments violate the urban growth criteria
23 of RCW 36.70A.110(3) and (4) and related GMA Goals for urban growth,
24 economic development and urban services, as follows:

25 4.1. by improperly extending urban governmental services into a rural,
26 agricultural area and encouraging urban development outside of an urban
27 area where adequate public facilities and services exist or can be provided in
28 an efficient manner in violation of RCW 36.70A.020(1)? [Dragonslayer G,
29 County I]
30

31 ⁶⁴ Intervenor Salishan-Mohegan and the Cowlitz Tribe concur with the City’s arguments and state the Board
32 need not reach this issue because the City’s ordinance makes no attempt to authorize sewer extension to
agricultural land. See Intervenor’s brief at 6 (May 28, 2014).

1 4.2. by encouraging economic development that is inconsistent with existing
2 comprehensive plans and is harmful to existing businesses in violation of
3 RCW 36.70A.020(5)? [Dragonslayer H, County J]

4 4.3. by encouraging development without ensuring that adequate public
5 facilities and services are available to support development without
6 decreasing current service levels below locally established minimum
7 standards, in violation of RCW 36.70A.020(12) and LCMC 18.120.050(3)?
8 [Dragonslayer K, County M]

9 *Applicable Laws:*

10 **RCW 36.70A.020 Planning goals.**

11 . . .
12 (1) Urban growth. Encourage development in urban areas where adequate
13 public facilities and services exist or can be provided in an efficient
14 manner.

15 . . .
16 (5) Economic development. Encourage economic development throughout
17 the state that is consistent with adopted comprehensive plans, promote
18 economic opportunity for all citizens of this state, especially for unemployed
19 and for disadvantaged persons, promote the retention and expansion of
20 existing businesses and recruitment of new businesses, recognize regional
21 differences impacting economic development opportunities, and encourage
22 growth in areas experiencing insufficient economic growth, all within the
23 capacities of the state's natural resources, public services, and public
24 facilities.

25 . . .
26 (12) Public facilities and services. Ensure that those public facilities and
27 services necessary to support development shall be adequate to serve the
28 development at the time the development is available for occupancy and use
29 without decreasing current service levels below locally established minimum
30 standards.

31 **RCW 36.70A.110 Comprehensive plans — Urban growth areas**

32 . . .
(3) Urban growth should be located first in areas already characterized by
urban growth that have adequate existing public facility and service
capacities to serve such development, second in areas already characterized
by urban growth that will be served adequately by a combination of both
existing public facilities and services and any additional needed public
facilities and services that are provided by either public or private sources,

1 and third in the remaining portions of the urban growth areas. Urban growth
2 may also be located in designated new fully contained communities as
3 defined by RCW 36.70A.350.

4 (4) In general, cities are the units of local government most appropriate to
5 provide urban governmental services. In general, it is not appropriate that
6 urban governmental services be extended to or expanded in rural areas
7 except in those limited circumstances shown to be necessary to protect basic
8 public health and safety and the environment and when such services are
9 financially supportable at rural densities and do not permit urban
10 development.

11 *Position of the Petitioners.*⁶⁵

12 Petitioner Gilbert contends GMA planning goals encourage growth in urban areas
13 where adequate public facilities and services exist or can be provided in an efficient
14 manner. Urban growth should not result in inappropriate conversion of undeveloped land
15 into sprawling, low-density development and incompatible uses should be discouraged on
16 natural resource lands.⁶⁶ The City amendments are based on the future possibility that the
17 Cowlitz Tribe will develop 152 acres adjacent to the City's UGA. The City should not
18 "undermine" GMA provisions against extending urban sewer service outside of a UGA by
19 "adopting Amendments to facilitate the conversion of non-UGA agricultural property to
20 federal jurisdiction so that urban sewer service may then be extended to the property."⁶⁷
21 Petitioners claim the underlying principal of matching development with available public
22 services is also reflected in RCW 36.70A.110(3). The City's amendments not only fail to
23 meet GMA goals, they also violate RCW 36.70A.110(3).⁶⁸
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31 ⁶⁵ Petitioners Dragonslayer and Clark County incorporate arguments set forth in the Gilbert Prehearing Brief.

32 ⁶⁶ Prehearing Brief of Greg and Susan Gilbert at 21 (May 8, 2014).

⁶⁷ *Id.* at 22.

⁶⁸ *Id.* at 23.

1 *Respondent and Intervenor*.⁶⁹

2 The City responds its amendments do not “facilitate” conversion of agricultural or
3 rural land; they would enable extension of city sewer service only to address public health
4 concerns or to serve federal property that is no longer subject to the GMA and therefore
5 cannot be considered “rural” or “agricultural” land.”⁷⁰ The City emphasized its amendments
6 have no bearing on whether the site is converted for use by the Cowlitz Tribe under federal
7 jurisdiction and thus, their actions do not violate the GMA.⁷¹
8

9
10 *Board Analysis and Decision*

11 Amendments in Ordinance 2013-011 were described above in Issue 1. However, in
12 Issue 4, the Board focuses on amendments to City Policies 1.3.1; 1.4.3; 4.2.3; 4.2.8; 8.2.3
13 and 8.2.4 and Countywide Planning Policy 1.1.12. and their relationship to RCW
14 35.70A.020 and .110(3) and (4). For purposes of this issue, it is sufficient to observe that a
15 likely result of the amendments is the extension of a sewer line to La Center’s city limits and
16 UGA boundary, ultimately to provide service to 152 acres of immediately adjacent land (land
17 now designated as agricultural land of long-term commercial significance), if and when that
18 land has been taken into trust by the BIA and designated as a Cowlitz Tribal reservation.
19 The sewer line would be sized to serve a tribal casino, restaurants and retail space, a 250-
20 room hotel, parking structures for more than 7000 vehicles, a recreational vehicle park, tribal
21 elder housing and tribal offices.
22

23 With Issue 4, the Petitioners argue the provision of sewer service to an area beyond
24 the City’s municipal boundary/UGA boundary conflicts with RCW 36.70A.110(3) and (4) and
25 the GMA goals that encourage development in urban areas (RCW 36.70A.020(1)),
26 encourage economic development in a manner consistent with adopted comprehensive
27 plans (.020(5)), and seek concurrency of public services with development (020(12)).
28

29
30 ⁶⁹ Intervenor Salishan-Mohegan and the Cowlitz Tribe concur with the City’s arguments and state that prior
31 Board decisions have no bearing on this case and the Board need not reach a decision in this case because
32 the property in question may not be subject to GMA. See Intervenor’s Brief at 6 (May 28, 2014).

⁷⁰ Brief of Respondent City of La Center at 19 (May 28, 2014).

⁷¹ *Id.* at 20.

1 RCW 36.70A.110(3) establishes a priority of areas for siting or locating urban
2 growth.⁷² In this instance, it is most probable urban growth will occur on the Cowlitz's 152
3 acres if that land becomes a tribal reservation. At that time, the property will no longer be
4 subject to the GMA or local land-use regulations. However, the Ordinance adopted by La
5 Center cannot be seen as violating RCW 36.70A.110(3) because the City's amendments do
6 not locate or site urban growth. Thus, the Board does not find the City violated RCW
7 36.70A.110(3).
8

9 On the other hand, RCW 36.70A.110(4) states that it is generally inappropriate to
10 extend urban governmental services to rural areas.⁷³ The extension of urban services in
11 the context of RCW 36.70A.110(4) has been addressed by our Supreme Court in *Thurston*
12 *County v. Cooper Point Association*.⁷⁴ In *Cooper Point*, the County proposed to extend a
13 sewer line from an urban sewer system into a rural area. The Court described the principal
14 issues before it as, first, whether the sewer extension proposed was subject to the
15 development restrictions of RCW 36.70A.110(4) and, secondly, if so, whether the proposed
16 extension was necessary to protect public health, safety and the environment. The Court
17 held RCW 36.70A.110(4) precluded the extension of the sewer line: "Because County's
18 proposal does just what the GMA prohibits – extends an urban governmental service into a
19 rural area. . . ." ⁷⁵ "In general, it is not appropriate that urban governmental services be
20 extended to or expanded in rural areas except in those limited circumstances shown to be
21 necessary to protect basic public health and safety and the environment and when such
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23

24
25 ⁷² RCW 36.70A.110(3) "Urban growth should be located **first** in areas already characterized by urban growth
26 that have adequate existing public facility and service capacities to serve such development, **second** in areas
27 already characterized by urban growth that will be served adequately by a combination of both existing public
28 facilities and services and any additional needed public facilities and services that are provided by either public
29 or private sources, and **third** in the remaining portions of the urban growth areas. Urban growth may also be
30 located in designated new fully contained communities as defined by RCW 36.70A.350."

31 ⁷³ Urban governmental services are defined by RCW 36.70A.030(18): "'Urban governmental services' or
32 'urban services' include those public services and public facilities at an intensity historically and typically
provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street
cleaning services, fire and police protection services, public transit services, and other public utilities
associated with urban areas and normally not associated with rural areas."

⁷⁴ *Thurston County v. Cooper Point Ass'n*, 148 Wn.2d 1, 57 P.3d 1156, 2002 Wash. LEXIS 719 (Wash. 2002).

⁷⁵ *Id.* at 14.

1 services are financially supportable at rural densities and do not permit urban development.”
2 (RCW 36.70A.110(4), in part).

3 To paraphrase and supplement the Court’s description of the issues in *Cooper Point*
4 and relate it to this matter:

5 The principal issues before us are whether the City’s proposal is subject to
6 development restrictions imposed by the aforementioned statutory provision
7 [RCW 36.70A.110(4)] and, if so, whether the City has shown that its proposal
8 is necessary to protect basic public health, safety and the environment and,
9 further, whether the proposal will permit urban development?⁷⁶

10 The proposed sewer extension would be into what is now a “rural” area (albeit would be
11 urban if developed by the Tribe), and it is not proposed due to health or environmental
12 concerns and it would facilitate urban development. This Board, in addressing sewer service
13 for a non-municipal UGA in San Juan County, stated:

14 Also, the 2003 ESSWD General Plan shows sewer lines running outside the
15 current UGA to service areas that now are outside the 2005 UGA. Extending
16 sewer service outside of the UGA is noncompliant with the GMA, unless...
17 the lines . . . correct a documented health hazard.⁷⁷

18
19 The Board acknowledges that City’s amendments to City Policies 1.3.1; 1.4.3; 4.2.3;
20 4.2.8; 8.2.3 and 8.2.4 were drafted so as to authorize a sewer service extension only after
21 the land has finally been confirmed as Cowlitz Tribal trust land. The Board further
22 acknowledges tribal trust land is not subject to state or local land use regulations. However,
23 the City of La Center is and will remain subject to the GMA and it is the City that plans to
24 extend its sewer service. Furthermore, it is apparent the Cowlitz Tribe’s trust land
25 application has been pending for more than a decade, the Tribe having first applied in 2002.
26 Matters related directly or indirectly to the land in question and the Cowlitz project have
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31 ⁷⁶ *Id.* at 4.

32 ⁷⁷ *Campbell v. San Juan County*, GMHB Case No. 05-2-0019c FDO at 10 (June 20, 2006). Also *Campbell v. San Juan County* GMHB Case No. 02-2-0008 Compliance Order (January 30, 2009) and *Campbell v. San Juan County*, GMHB Case No. 05-2-0022c Compliance Order/Final Decision at 10 (June 20, 2006).

1 been before this Board and the courts during the years since 2002.⁷⁸ Additionally, the Board
2 has been apprised of challenges now pending in Federal District Court.⁷⁹

3 With that history in mind, the Board is mindful of observations made in past years by
4 the Washington State Court of Appeals. In 2006 Clark County adopted an agreement
5 (Memorandum of Understanding or MOU) whereby the County agreed to provide water to
6 the Cowlitz property. Under the MOU, the County's obligation to provide water would only
7 become effective upon BIA trust status approval. Although the Court's decision was based
8 on a finding that the MOU constituted a *de facto* comprehensive plan amendment, the Court
9 observed the Tribe's trust land application "was still pending."⁸⁰

11 Five years later, the Court of Appeals considered an appeal of Clark County's de-
12 designation of extensive Agriculture of Long-Term Commercial Significance acreage,⁸¹
13 including the 152 acres now included in the Cowlitz trust application. The Court of Appeals
14 again referred to the "pending" nature of the Tribe's application:

16 At the time of the County's decision, the possible approval of the pending
17 trust application and the possible building of a casino were too attenuated to
18 support the County's position. Allowing the County to begin developing the
19 land in 2007 based on the Cowlitz Tribe's speculative development plans,
20 which could take years to overcome multiple legal hurdles, could have
21 resulted in the inappropriate conversion of agricultural land pursuant to the
22 GMA if the Cowlitz Tribe's speculative development plans fell through.
23 Perhaps in the future, the circumstances of the land will have changed such
24 that the land in and around parcel LB-2 no longer qualifies as ALLTCS under
25 the *Lewis County* test.⁸² (emphasis added)

26 The Board views the City's decision to adopt comprehensive plan and development
27 regulation amendments in 2013 authorizing a future sewer extension as premature, just as

28 ⁷⁸ *Alexanderson v. Clark County*, GMHB Case No. 04-2-0008; *Karpinski v. Clark County*, GMHB Case No. 07-
29 2-0027; and see also *Alexanderson v. City of La Center*, Case No. 12-2-0004.

30 ⁷⁹ *Confederated Tribes of the Grand Ronde Community of Oregon v. Jewel*, US District Court for the District of
31 Columbia, Case No. 1:13-cv-00849-BJR. See also Ex. 123 submitted by Petitioners and accepted by this
32 Board.

⁸⁰ *Alexanderson v. Bd. of Comm'rs*, 135 Wn. App. 541, 544 (2006).

⁸¹ Natural resource land designated pursuant to RCW 36.70A.170.

⁸² *Clark County v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn. App. 204, 243, 254 P.3d 862 (2011), *rev'd*
in part on other grounds 177 Wn.2d 136, 298 P.3d 704 (2013).

1 the Court of Appeals found in 2006 and again in 2011. Challenges to the BIA's 2010 trust
2 status determination resulted in a remand by the Federal District Court in 2013. Another BIA
3 decision was issued later in 2013, and has similarly been challenged. As the Court of
4 Appeals stated in *Clark County*, "Perhaps in the future, the circumstances of the land will
5 have changed." At this point, any decision which would potentially lead to the loss of
6 important designated agricultural resource land is premature.⁸³
7

8 The pressure to convert these lands, especially in areas impacted by population
9 growth and development, is even more prevalent today. The Board recognizes that the
10 counties and cities of Washington face a multitude of difficult and demanding challenges
11 when determining how their communities will grow and how to finance that growth. But,
12 these challenges must be addressed within the mandates of the GMA so as to serve the
13 "public's interest in the conservation and the wise use of our lands." Washington's limited,
14 irreplaceable agricultural lands are at the forefront of this mandate, with the discretionary
15 planning choices of cities and counties confined so as to prevent the further erosion of the
16 State's ability to provide food for its citizens.
17

18 In sum, the Board finds Petitioners have met their burden of proof showing City
19 Policies 1.3.1; 1.4.3; 4.2.3; 4.2.8; 8.2.3 and 8.2.4 do not comply with RCW 36.70A.110(4)
20 because the City amendments extend urban governmental services to a non-urban area in
21 a way that will encourage urban development. Petitioners' further arguments concerning
22 violations of RCW 36.70A.110(3) and Planning goals (1), (5), and (12) are unpersuasive.
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27 ⁸³ For the importance of agricultural lands, see GMHB Case No. 07-2-0027 *Karpinski v. Clark County*,
28 Amended Final Decision at 33 (June 3, 2008) "There is no doubt that the GMA sees agricultural lands and the
29 industry that relies on them as something special given the duty set forth to *designate* agricultural land and
30 *conserve* such land in order to *maintain* and *enhance* the agricultural industry. The purpose of this legislative
31 mandate was articulated by the Supreme Court a decade ago when it held: 'The GMA sought to control and
32 regulate growth, and specifically emphasized the protection of natural resource lands, including agricultural
land. The Legislature hoped to preserve agricultural land near our urban centers so that freshly grown food
would be readily available to urban residents and the next generation could see food production and be
disabused of the notion that food grows on supermarket shelves.'" (*Redmond v. Central Puget Sound Growth
Management Hearings Board*, 136 Wn.2d 38, 57-58 (1998))

1 **SEPA**

2 **Issue 6:** SEPA Compliance:

3
4 Did the City approve the Amendments without applying SEPA requirements
5 as follows:

6 6.1. Did the City approve the Amendments without following the decision-
7 making requirements for incorporating environmental considerations into its
8 decision; did not adequately disclose and evaluate the probable significant
9 adverse environmental impacts of the proposal and reasonable alternatives;
10 made unsupported and inaccurate assumptions regarding potential beneficial
11 impacts of the proposal; did not adequately analyze alternatives to the
12 proposal, including the no action alternative; and improperly assumed
13 impacts of alternatives will be the same thereby violating RCW
14 36.70A.020(10); RCW 43.21C.011; RCW 43.21C.030; 43.21C.030(2)(c)(d)
15 and (e); RCW 43.21C.031; WAC 197-11 Parts 4-6; WAC 197-11-030; WAC
16 197-11-060, WAC 197-11-402(1), (2),(6) and (9); WAC 197-11-440(5); and
17 WAC 197-11-442? [Dragonslayer L, M, R, and S; County N and O]

18 6.2. Did the City's approval of the Amendments fail to comply with RCW
19 43.21C.030(2)(c); WAC 197-11-400(2); WAC 197-11-402(10); and WAC
20 197-11-406 because the FEIS provides a post-hoc justification for the City's
21 policy decision instead of providing an impartial description of the proposal's
22 probable significant impacts, reasonable alternatives to the proposal, and
23 mitigation measures? [Dragonslayer N]

24 6.3. Did the City's approval of the Amendments fail to comply with RCW
25 43.21C.030(2)(c); WAC 197-11-440; WAC 197-11-442; WAC 197-11-060;
26 WAC 197-11-704; WAC 197-11-774; and WAC 197-11-792 because the
27 City's environmental documentation fails to adequately define the proposal
28 and scope the environmental review, inconsistently treats the Amendments
29 as a non-project action while acknowledging that the Amendments will result
30 in only one site specific application, fails to adequately analyze cumulative
31 impacts, and improperly piecemeals environmental review? [Dragonslayer O]

32 6.4. Did the City's approval of the Amendments fail to comply with RCW
43.21C.030; RCW 43.21C.034; WAC 197-11-402; WAC 197-11-440(6);
WAC 197-11-600; WAC 197-11-610; WAC 197-11-630; and WAC 197-11-
635 because the FEIS inappropriately relies on prior environmental
documents that are inadequate, which the City and others previously
acknowledged were inadequate and which were appealed to federal court on
the basis of their inadequacy prior the City's reliance on the documents, and

1 because the City failed to assess new information and changed
2 circumstances relevant to the current proposal, including current baseline
3 environmental information? [Dragonslayer P]

4 6.5. Did the City's approval of the Amendments fail to comply with RCW
5 43.21C.030(2)(c); LCMC 18.120.010; and LCMC 18.120.050 because the
6 FEIS improperly assumes that the City has the legal authority to provide
7 extraterritorial service to the Tribe's proposed casino resort and fails to
8 adequately evaluate significant conflicts between the proposed sewer
9 extension, Growth Management Act restrictions, and Clark County planning
10 policies? [Dragonslayer Q]

11 6.6. Did the City's approval of the Amendments fail to comply with RCW
12 43.21C.060; RCW 43.21C.031; WAC 197-11-440(6); and WAC 197-11-442
13 because the FEIS does not adequately identify, describe, or consider
14 reasonable mitigation measures that would avoid or minimize adverse
15 impacts or enhance environmental quality? [Dragonslayer T]

16 *Applicable Laws:*

17 **RCW 43.21C.030 Guidelines for state agencies, local governments —**
18 **Statements — Reports — Advice — Information.**

19 The legislature authorizes and directs that, to the fullest extent possible: (1)
20 The policies, regulations, and laws of the state of Washington shall be
21 interpreted and administered in accordance with the policies set forth in this
22 chapter, and (2) all branches of government of this state, including state
23 agencies, municipal and public corporations, and counties shall:

24 (a) Utilize a systematic, interdisciplinary approach which will insure the
25 integrated use of the natural and social sciences and the environmental
26 design arts in planning and in decision making which may have an impact on
27 the environment;

28 (b) Identify and develop methods and procedures, in consultation with the
29 department of ecology and the ecological commission, which will insure that
30 presently unquantified environmental amenities and values will be given
31 appropriate consideration in decision making along with economic and
32 technical considerations;

(c) Include in every recommendation or report on proposals for legislation
and other major actions significantly affecting the quality of the environment,
a detailed statement by the responsible official on:

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects which cannot be avoided should the

proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(d) Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any public agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate federal, province, state, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the governor, the department of ecology, the ecological commission, and the public, and shall accompany the proposal through the existing agency review processes;

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(f) Recognize the worldwide and long-range character of environmental problems and, where consistent with state policy, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment;

(g) Make available to the federal government, other states, provinces of Canada, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(h) Initiate and utilize ecological information in the planning and development of natural resource-oriented projects.

RCW 43.21C.034 Use of existing documents

Lead agencies are authorized to use in whole or in part existing environmental documents for new project or non-project actions, if the documents adequately address environmental considerations set forth in RCW 43.21C.030. The prior proposal or action and the new proposal or action need not be identical, but must have similar elements that provide a basis for comparing their environmental consequences such as timing, types of impacts, alternatives, or geography. The lead agency shall independently review the content of the existing documents and determine that the information and analysis to be used is relevant and adequate. If necessary, the lead agency may require additional documentation to ensure that all environmental impacts have been adequately addressed.

1 *Position of the Petitioners*⁸⁴

2 Petitioners Dragonslayer, Inc. and Michels Development, Inc. argue the 2013 FEIS
3 must provide sufficient information to allow officials to make a “reasoned choice among
4 alternatives,” and the environmental effects must be “disclosed, discussed and
5 substantiated by opinion and data.”⁸⁵ The “level of detail must be commensurate with the
6 importance of the environmental impact and the plausibility of alternatives.”⁸⁶ Petitioners
7 argue the City’s environmental review did not satisfy these requirements.
8

9 Petitioners contend the City failed to properly define the scope of the EIS by treating
10 the amendments as a “non-project” EIS.⁸⁷ It did not acknowledge the relationship between
11 the amendments, the sewer extension, and the Cowlitz Property development and
12 incorrectly claimed the impacts of interdependent parts of the proposal would occur
13 regardless of whether the Amendments were adopted.⁸⁸ The 2013 FEIS restricts the scope
14 of environmental analysis to a narrow “Study Corridor” and fails to examine important
15 environmental impacts outside of this corridor.
16

17 Petitioners argue the City had an obligation to analyze the cumulative impacts of the
18 planned sewer extension and Cowlitz Property development.⁸⁹ Urbanization of a newly-
19 annexed area within the City’s UGA and potential development of the Cowlitz property are
20 reasonably foreseeable outcomes that have sufficient causal relationship to the Proposed
21 Amendments to require inclusion in the EIS. Petitioners claim the City cannot rely on the
22 2006 and 2008 FEIS documents to evaluate the significance of the City’s proposal without
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27 ⁸⁴ Petitioner Clark County did not brief Issue 6 SEPA. Petitioner Greg and Susan Gilberts adopt and
28 incorporate the briefing presented by Petitioners Dragonslayer, Inc. and Michels Development, Inc.

29 ⁸⁵ *Kiewit Constr. Group, Inc. v. Clark Cty.*, 83 Wn. App. 133, 140, 920 P.2d 1207 (1996).

30 ⁸⁶ *Id.*

31 ⁸⁷ Petitioner Dragonslayer Prehearing Brief at 5-6.

32 ⁸⁸ *Id.* at 6-7.

⁸⁹ See WAC 197-11-060(4); *King County v. Wash. State Boundary Rev. Bd. for King Cty.*, 122 Wn.2d 648,664,
860 P.2d 1024 (1994) (“[A] proposed land-use related action is not insulated from full environmental review
simply because there are no existing specific proposals to develop the land in question or because there are
no immediate land-use changes which will flow from the proposed action.”)

1 updating the relevant baseline information. Material facts, laws, and circumstances have
2 changed since the 2006 and 2008 documents were issued.⁹⁰

3 Petitioners fault the FEIS for failures to address: impacts on future TMDL standards
4 for the East Fork Lewis River, an impaired water body; impacts related to the City's National
5 Pollution Discharge Elimination System (NPDES) permit for the East Fork Lewis River
6 related to future growth in the City's UGA;⁹¹ impacts to critical aquifer recharge areas in
7 regards to impermeable surfaces;⁹² impacts to listed fish and wildlife;⁹³ and finally, impacts
8 on agriculture and traffic-related issues.⁹⁴

10 Petitioners expressed their complaints about the inadequate 2008 EIS during federal
11 litigation and in public comments to the City; they requested a new or supplemental EIS.
12 Petitioners chose not to repeat all arguments in this case, as they should be resolved in
13 federal court.

15 *Respondent and Intervenors.*⁹⁵

16 The City responds by stating the rule of reason is satisfied if the 2013 FEIS presents
17 decision-makers "with a 'reasonably thorough discussion of the significant aspects of the
18 probable environmental consequences' of the agency's decision." The City argues it
19 correctly defined the amendments as a non-project action as defined in WAC 197-11-704
20 and in *Emerald Downs*.⁹⁶ The City contends its amendments set standards for possible
21 sewer extensions⁹⁷ and they are not linked solely to the proposed site for the Cowlitz Tribe
22 reservation. Sewer service cannot be extended, and no agreement to provide sewer
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26 ⁹⁰ Petitioner Dragonslayer Prehearing Brief at 11.

27 ⁹¹ *Id.* at 13-14.

28 ⁹² *Id.* at 15.

29 ⁹³ *Id.* at 17.

30 ⁹⁴ *Id.* at 18.

31 ⁹⁵ Intervenor Salishan-Mohegan, LLC and the Cowlitz Indian Tribe did not submit arguments on Issue 6.

32 ⁹⁶ City of La Center Prehearing Brief at 21-22, and *Citizens Alliance to Protect Our Wetlands v. City of Auburn*,
126 Wn.2d 356 (Wash. 1995) (zoning code text amendment making a racetrack a conditional use in a
particular zone was a non-project action, even though amendment was adopted at the request of the Emerald
Downs racetrack developer).

⁹⁷ City of La Center Prehearing Brief at 22 (See Policies 4.2.3, 4.2.8, 8.1.1, 8.2.3, and 8.2.4)

1 service can be entered into, except where land has already been acquired or taken into trust
2 by the federal government.

3 The City did not “piecemeal” environmental review, rather it addressed impacts and
4 alternatives “in the level of detail appropriate to the scope of the non-project proposal and to
5 the level of planning for the proposal” in accordance with WAC 197-11-442(2).⁹⁸ Petitioners’
6 criticisms of the 2013 FEIS incorrectly assume that the action to be analyzed is the Cowlitz
7 Tribe development, rather than “non-project” amendments to the City’s comprehensive plan.
8 The City asserts it has already responded to Petitioner’s criticisms in detail in the EIS itself.
9

10 11 *Board Analysis and Decision*

12 In 2006, the City proposed to expand its Urban Growth Area to add 2,033 acres of
13 industrial, commercial, residential and conservation uses to the north, west and east of its
14 existing UGA. Industrial and commercial uses would be clustered in the I-5 Interstate area
15 and offer residential uses in transitional areas.⁹⁹ The City completed a Final Environmental
16 Impact Statement (2006 FEIS) concluding that the Preferred Alternative would result in
17 increased urban growth around La Center, but mitigation measures were in place or were
18 readily available to mitigate identified impacts.¹⁰⁰ The 2006 FEIS was not appealed.
19

20 In 2008, the U.S. Department of Interior, Bureau of Indian Affairs, assessed the
21 environmental consequences of proposed Federal Action to acquire 152 acres to be placed
22 in trust status of the Cowlitz Tribe. The Final Environmental Impact Statement (2008 FEIS)
23 issued May 2008 analyzed alternatives to the proposed site, alternative uses on the site and
24 a no action alternative. The preferred alternative would develop the 152 acres into a
25 gaming, entertainment, and hotel complex along with parking, recreational vehicle sites, a
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31 ⁹⁸ *Id.* at 23.

32 ⁹⁹ Clark County Prehearing Brief, Ex. 5 Final Environmental Impact Statement, December 19, 2006 at IR
002663

¹⁰⁰ *Id.* at IR 002664.

1 wastewater treatment facility and Tribal facilities.¹⁰¹ The 2008 FEIS was challenged by two
2 lawsuits filed in United States District Court for the District of Columbia.¹⁰²

3 In 2013, the City proposed to amend its Urban Area Comprehensive Plan, Capital
4 Facilities Plan, the General Sewer Plan and its Municipal Code 13.10 to clarify its policies
5 and procedures to extend city sewer lines within and outside its UGA and adopt a policy
6 regarding sewer extensions to land owned or held in trust by the federal government.¹⁰³
7 The City completed a 2013 Final Impact Statement (2013 FEIS) in which it concluded that
8 environmental impacts could be mitigated and that the Preferred Alternative is the only one
9 that would provide “clear and consistent requirements for extending sewer service outside
10 the City’s UGA.”¹⁰⁴ The City’s FEIS acknowledged the controversial nature of developing
11 the Cowlitz Tribal site, but stated that the federal government had reviewed the Tribe’s
12 environmental documents and found them to be adequate under the National Environmental
13 Protection Act.¹⁰⁵

14
15 The Board now reviews Petitioners’ complaints about the City’s environmental
16 analysis regarding the City’s amendments in Ordinance 2013-011. Should the City have
17 conducted a more detailed environmental impact analysis under the requirements for
18 “project” rather than a “non-project” action? Petitioners argue the City should not escape its
19 obligations to analyze potential adverse environmental impacts of extending sewer services
20 and the possible development of the Cowlitz site.¹⁰⁶ Relying on *Citizens Alliance*,¹⁰⁷
21 Petitioners claim the City erroneously limited its environmental analysis to a narrow study
22 corridor to extend the sewer line, when they should have analyzed cumulative
23 environmental impacts resulting from sewer service extension and development that will
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28 ¹⁰¹ Clark County Prehearing Brief, Ex. 13 Final Environmental Impact Statement, May 2008, at IR 003432.

29 ¹⁰² *Id.* Ex. 112 Final Environmental Impact Statement, November 2013 at IR 013561.

30 ¹⁰³ *Id.* at IR 013390.

31 ¹⁰⁴ *Id.* at IR 013393.

32 ¹⁰⁵ *Id.* at IR 013394.

¹⁰⁶ Reply Brief of Dragonslayer, Inc. and Michels Development, LLC at 4-5 (June 6, 2014).

¹⁰⁷ *Citizens Alliance to Protect Our Wetlands v. City of Auburn*, 126 Wn.2d 356, 894 P.2d 1300, 1995 Wash. LEXIS 157 (Wash. 1995).

1 facilitate development of the Cowlitz site.¹⁰⁸ Petitioners' claims in Issues 6.1, 6.2, 6.3 and
2 6.6 all point to the lack of cumulative impacts analysis and the limited scope of the project
3 under the rubric of a "non-project action." WAC 197-11-704, in part, defines two categories
4 for "actions":
5

6 ...

6 (2) Actions fall within one of two categories:

7 (a) **Project actions.** A project action involves a decision on a specific project,
8 such as a construction or management activity located in a defined
9 geographic area. Projects include and are limited to agency decisions to:

10 (i) License, fund, or undertake any activity that will directly modify the
11 environment, whether the activity will be conducted by the agency, an
12 applicant, or under contract.

12 (ii) Purchase, sell, lease, transfer, or exchange natural resources, including
13 publicly owned land, whether or not the environment is directly modified.

13 (b) **Nonproject actions.** Nonproject actions involve decisions on policies,
14 plans, or programs.

15 (i) The adoption or amendment of legislation, ordinances, rules, or
16 regulations that contain standards controlling use or modification of the
17 environment;

17 (ii) The adoption or amendment of comprehensive land use plans or zoning
18 ordinances;

19 (iii) The adoption of any policy, plan, or program that will govern the
20 development of a series of connected actions (WAC 197-11-060), but not
21 including any policy, plan, or program for which approval must be obtained
22 from any federal agency prior to implementation;

22 (iv) Creation of a district or annexations to any city, town or district;

23 (v) Capital budgets; and

24 (vi) Road, street, and highway plans.

25 In addition, WAC 197-11-774 defines "Non-project means actions which are different
26 or broader than a single site specific project, such as plans, policies, and programs." In
27 reviewing the City's 2013 FEIS, the Board finds that it does assess impacts from the
28 proposed City amendments appropriate to the scope of a non-project proposal and for the
29 level of planning for the amendments.¹⁰⁹ Petitioners failed to carry their burden of proof
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31 ¹⁰⁸ Reply Brief of Dragonslayer, Inc. and Michels Development, LLC at 5-6 (June 6, 2014).

32 ¹⁰⁹ Ex. 112, Final Environmental Impact Statement, November 2013 Table 1.1 Summary of Potential
Environmental Impacts and Mitigation Measures at IR 013394-99. See also WAC 197-11-442, WAC 197-

1 showing the City amendments are a “project action” and should have had a broader
2 cumulative impacts analysis. The Board finds the City’s amendments to its comprehensive
3 plan and development regulations constitute a “non-project action” and the City did not
4 violate RCW 43.21C.030(2)(c); WAC 197-11-440; WAC 197-11-442; WAC 197-11-060;
5 WAC 197-11-704; WAC 197-11-774; and WAC 197-11-792 (Issue 6.3).

6
7 That said, however, the City’s policy amendments and its 2013 FEIS show intent to
8 work with the Cowlitz Tribe to develop specific property adjacent to the City’s UGA. Policy
9 1.4.3(h) allows the City to evaluate opportunities in connection with developing land
10 adjacent to the city limits including the extension of City sewer service.¹¹⁰ Policy 4.2.3 and
11 LCMC 13.10.370(4)(b) allow sewer line extensions beyond the UGA for lands not subject to
12 the GMA and held in trust by the federal government.¹¹¹ The City’s 2013 FEIS reflects the
13 City’s desire to facilitate development of a specific site by coordinating with the Cowlitz
14 Tribe.¹¹²

15
16 The Cowlitz Indian Tribe is the only entity that has shown the interest and the
17 financial commitment to enable the City to extend its sewer service to the
18 Junction area. The provision of city sewer service to the proposed Cowlitz
19 Indian Reservation would assure the availability of sewer service at
reasonable rates to businesses and residents in the newly annexed area.

20 ...
21 These amendments would provide consistent, clear policy direction regarding
22 the circumstances and terms under which the City could furnish sewer
23 service outside its City limits. One likely result of these amendments, if
24 enacted, would be to allow La Center to enter into an agreement with the
Cowlitz Indian Tribe to extend sewer service to the I-5 Junction to serve the
federal trust land. A sewer service agreement with the Cowlitz Tribe would

25
26 11-704(2)(b)(i) and -774 and SEPA Handbook at Ch. 4 (The Board takes official notice of the SEPA Handbook
27 under WAC 242-03-640) <http://www.ecy.wa.gov/programs/sea/sepa/handbk/hbch04.html>

28 ¹¹⁰ City Staff Report – Ex. A, 2013 Comprehensive Plan Amendments at 2 Policy 1.4.3 (h) “The City shall
29 evaluate opportunities to coordinate with the Cowlitz Tribe regarding eventual development of the Cowlitz
Tribe Reservation adjacent to the City’s corporate limits, including extension of City sewer service.”

30 ¹¹¹ *Id.* at 12 and 17.

31 ¹¹² City of La Center FEIS 2013 GMA Amendments, Ex. 112 at 013403 For example, the FEIS contains the
32 history of the City’s Sewer Development Agreement with the Cowlitz Tribe which was overturned by this Board
as a “de-facto amendment” to the City’s comprehensive plan. In response to the Board’s ruling, the City
amended its Comprehensive Plan and development regulations with the intention of working with the Cowlitz
Tribe to plan for extraterritorial sewer extension.

1 provide funding to connect the Junction area with the City's WWTP located in
2 the downtown core.¹¹³ (emphasis added)

3 Given the potential development of the Cowlitz site with the extension of City sewers, should
4 the City have relied on prior environmental analyses that may be outdated or should they
5 have completed a new analysis? Rather than conduct a complete new EIS, the City
6 incorporated two prior environmental assessments relating to the sewer extension and the
7 Cowlitz site.¹¹⁴ WAC 197-11-635 encourages jurisdictions to incorporate other
8 environmental material by reference whenever possible.¹¹⁵ Further, in accordance with
9 WAC 197-11-600(4)(a), the City properly included *Appendix 6 Determination of Significance*
10 *and Adoption of Existing Environmental Documents* in its 2013 FEIS demonstrating
11 compliance with SEPA WACs.¹¹⁶ Both the 2006 and the 2008 FEISs acknowledge the
12 Cowlitz site development; the former in less detail and latter in great detail.¹¹⁷ The City
13 relies on the detailed environmental impact analysis in the 2008 *Final Environmental Impact*
14 *Statement, Cowlitz Indian Tribe Trust Acquisition and Casino Project* conducted by the
15 Bureau of Indian Affairs (BIA) to "meet a portion of [their] environmental review."¹¹⁸ The
16 2008 FEIS analyzes environmental impacts for a casino/resort development at the La
17 Center/I-5 location. It also contains other alternatives for a business park and a
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22 ¹¹³ *Id.* at 013405.

23 ¹¹⁴ Ex. 112 at 013558-013562, City of La Center FEIS 2013 GMA Amendments Appendix 6 at 80-81
24 incorporating **2006** *Final Environmental Impact Statement, La Center Comprehensive Plan Amendment*
25 (December 19, 2006) and the **2008** *Final Environmental Impact Statement, Cowlitz Indian Tribe Trust*
26 *Acquisition and Casino Project*, U.S. Department of Interior, Bureau of Indian Affairs (May 2008).

27 ¹¹⁵ WAC 197-11-635 Incorporation by reference – Procedures. "(1) Agencies should use existing studies and
28 incorporate material by reference whenever appropriate. (2) Material incorporated by reference (a) shall be
29 cited, its location identified, and its relevant content briefly described; and (b) shall be made available for public
30 review during applicable comment periods."

31 ¹¹⁶ *Id.* at 013558. See also WAC 197-11-600(4)(a): "(4) Existing documents may be used for a proposal by
32 employing one or more of the following methods: (a) 'Adoption,' where an agency may use all or part of an
existing environmental document to meet its responsibilities under SEPA. Agencies acting on the same
proposal for which an environmental document was prepared are not required to adopt the document. . . ."

¹¹⁷ Ex. 5, *2006 Final Environmental Impact Statement, La Center Comprehensive Plan Amendment* at 002658,
and specifically at 002726; and Ex. 13 *2008 Final Environmental Impact Statement, Cowlitz Indian Tribe Trust*
Acquisition and Casino Project at 003480 and specifically at 003486.

¹¹⁸ Ex. 112 at 013562.

1 casino/resort at an entirely different site south of La Center.¹¹⁹ Together, the 2013, 2008
2 and 2006 EIS documents demonstrate the City complied with SEPA's process requirements
3 to incorporate other documents in its 2013 FEIS. Petitioners do not persuade the Board that
4 the City has employed an incorrect process to analyze amendments in Ordinance 2013-
5 011.

6
7 Was the City's 2013 FEIS adequate? Should the City have further addressed
8 environmental impacts, including the cumulative impacts of the planned sewer extension
9 and Cowlitz Property development?¹²⁰ Petitioners argue the City violated SEPA when it
10 relied on a legally challenged and inadequate environmental document without explaining
11 the basis for its reliance.¹²¹ Petitioners claim the 2008 FEIS was faulty, will not withstand
12 judicial scrutiny and should not have been used by the City to assess environmental
13 impacts of the amendments. Petitioners chose not to repeat all arguments from their federal
14 briefs about the inadequacy of the 2008 FEIS, but argue a new or supplemental EIS should
15 be required.¹²² Petitioners state "as illustrated below, the 2013 FEIS does not adequately
16 consider the probable significant adverse environmental impacts."¹²³

17
18 Petitioners then list shortcomings in the 2013 EIS: water quality data were flawed in
19 describing how potential urban growth related to a National Pollution Discharge Elimination
20 System (NPDES) permit for East Fork Lewis River;¹²⁴ Critical Aquifer Recharge Areas were
21 not adequately addressed in regards to impermeable surfaces;¹²⁵ impacts to shorelines and
22 wetlands were not adequately analyzed;¹²⁶ impacts to listed fish and wildlife were not
23 sufficient;¹²⁷ and finally, impacts on agriculture and traffic-related issues were not
24
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26 ¹¹⁹ Ex. 13, *2008 Final Environmental Impact Statement, Cowlitz Indian Tribe Trust Acquisition and Casino*
27 *Project* at 003486 , 003519, and 003522.

28 ¹²⁰ Whether the City's environmental review was sufficient is now being contested in federal court. See Ex.
29 112 at 013561.

30 ¹²¹ Petitioner Dragonslayer Prehearing Brief at 9 (May 8, 2014).

31 ¹²² *Id.* at 9.

32 ¹²³ *Id.* at 12.

¹²⁴ *Id.* at 13-14.

¹²⁵ *Id.* at 15.

¹²⁶ *Id.* at 15-16.

¹²⁷ *Id.* at 17.

1 considered.¹²⁸ Petitioners give the Board a list of failures with a series of hypothetical
2 unanswered questions and assert the City based its FEIS on unsubstantiated
3 assumptions.¹²⁹ However, to the extent Petitioners seek to have this Board determine the
4 2008 EIS incorporated by reference is flawed, they failed to make their case by specific
5 argument and evidence in their briefs or at hearing. Thus, they have not met their burden of
6 proof that the 2013 FEIS is inadequate. The Board finds the Petitioners have failed to
7 establish violations of RCW 43.21C. Legal Issue 6 is dismissed.
8

9 VI. ORDER

10 Based on review of the Petitions for Review, the briefs and exhibits submitted by the
11 parties, the GMA and SEPA, prior Board orders and case law, having considered the
12 arguments of the parties and deliberated the matter, the Board ORDERS:
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14 Issue 1:

15 City Policy 1.3.1 encourages commercial development adjacent to the City of La
16 Center's urban growth area boundary and is not consistent with CPP 1.1.12 which specifies
17 the urban development shall be limited to areas within the urban growth area. City Policy
18 1.3.1 is not consistent with County-wide Planning Policy 1.1.12 and thus violates RCW
19 36.70A.100(1) and .210(1).
20

21 City Policies 1.4.3(h) and 4.2.3(b) allow the City to evaluate opportunities in
22 connection with developing land adjacent to the city limits and extending sewer service to
23 land outside the UGA. City Policies 1.4.3 (h) and 4.2.3(b) conflict with 20-Year Planning
24 Policy 6.3.8 in violation of RCW 36.70A.100 and those City Policies also conflict with
25 County-wide Planning Policy 1.1.12 in violation of RCW 36.70A.100 and RCW
26 36.70A.210(1).
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32 ¹²⁸ *Id.* at 18.

¹²⁹ *Id.* at 19.

Issue 4:

The Board finds amendments to City Policies 1.3.1; 1.4.3; 4.2.3; 4.2.8; 8.2.3 and 8.2.4 do not comply with RCW 36.70A.110(4) because the amendments extend urban services into rural areas in order to permit urban development.

The Board remands City of La Center Ordinance 2013-011 to take legislative action to comply with the requirements of the GMA as set forth in this order. All other issues raised in the petitions for review are dismissed.

Item	Date Due
Compliance Due on identified areas of noncompliance	February 9, 2015
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	February 23, 2015
Objections to a Finding of Compliance	March 9, 2015
Response to Objections	March 19, 2015
Compliance Hearing Location to be determined	April 2, 2015 10:30 a.m.

DATED this 24th day of October, 2014.

Nina Carter, Board Member

William Roehl, Board Member

Margaret Pageler, Board Member

1 **Note: This is a final decision and order of the Growth Management Hearings Board**
2 **issued pursuant to RCW 36.70A.300.¹³⁰**
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29 ¹³⁰ Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all
30 parties within ten days of mailing of the final order. WAC 242-03-830(1); WAC 242-03-840.
31 A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days
32 as provided in RCW 34.05.514 or 36.01.050. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent
upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings
Board is not authorized to provide legal advice.